

**TITLE 3**  
**LICENSING AND REGULATION OF ALCOHOL, MALT BEVERAGES AND DRINKING**  
**ESTABLISHMENTS**

(This Title replaced in its entirety by Ordinance 2011-01, effective August 3, 2011)

Chapters:

- 3.01: General Provisions
- 3.02: Licensing and Sales of Malt Beverages
- 3.03: Full Service, On Sale and Malt Beverage Restaurant License
- 3.04: Structure Requirements, On Sale Establishments

**CHAPTER 3.01**  
**GENERAL PROVISIONS**

SECTIONS:

- 3.01.01: Scope and Purpose
- 3.01.02: Definitions
- 3.01.03: Penalty

**3.01.01: SCOPE AND PURPOSE**

This Title shall set forth licensing requirements related to the sale of alcohol and malt beverages and shall regulate drinking establishments and the sale of alcohol and malt beverages within the City.

**3.01.02: DEFINITIONS**

A term that is defined in a specific section of this chapter is to be first given the meaning therein defined. If a term is not defined in a specific section the term is to be defined using the definitions below in this section. If a term is not defined in this section the term is to be given the meaning as defined in Title 35 of the South Dakota Codified Laws, SDCL. If a term is not provided for in the SDCL the term is to be given its plain and ordinary meaning.

**ALCOHOLIC BEVERAGE:** Any distilled spirits, wine, and malt beverages as defined in this chapter.

**BAR:** Any permanent installed counter within the restaurant area from which alcoholic beverages are regularly served to customers by a person employed by the facility and is tending bar or drawing or mixing or otherwise preparing alcoholic beverages for consumption within the facility.

**BEER GARDEN:** A designated area within the premises of a licensed on sale dealer, identified in the license application, adjacent to the permanent structure on the premises, and separated and defined by the temporary or permanent barriers required by this Ordinance. A Beer Garden shall not include a deck or patio area as defined in this Ordinance, and the area may be covered or uncovered. The total area of a beer garden may not exceed the footprint of the qualified, permanent structure located on the licensed premises.

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**BUILDING/STRUCTURE:** Structure having a roof supported by columns or walls for the shelter, support or enclosure for persons, animals or chattels. A building may be precut or prefabricated, or it may be made up of mobile modules or sections, factory fabricated and transportable by rail or truck to a building site, and designed to be incorporated into a structure upon a permanent foundation on the said site.

**BULK CONTAINER:** Any package-or any container within which container is one or more packages.

**BUSINESS:** Means any activity, trade, calling, profession, or occupation, whether sole proprietorship, partnership, corporation, limited liability company or other recognized entity, which regularly provides delivery of products and/or services from an address or other location(s) within the corporate limits of the City of Sturgis. Business includes "home occupations" which involve the sale of goods or services as described in this definition.

**DECK:** Any walking surface, covered or uncovered, which is attached to the exterior of a structure and is elevated above finish grade. Decks shall have at least one access attached to a permanent structure for which malt beverage or alcohol is served or consumed.

**DISTILLED SPIRITS:** Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, containing not less than one-half of one percent (0.5%) of alcohol by weight

**EVENT:** An organized occurrence or happening lasting four (4) or more consecutive days or where the City provides extraordinary services, including but not limited to sanitation services, law enforcement or traffic control.

**FLOOR:** An area that is surrounded by exterior walls and a roof of the building or portion thereof.

**MALT BEVERAGE:** A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared there from, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent (0.5%) of alcohol by weight.

**MINOR:** Any person who is under the age of twenty-one (21).

**OFF-SALE:** The sale of any alcoholic beverage for consumption off the premises where sold.

**ON-SALE:** The sale of any alcoholic beverage for consumption only upon the premises where it is sold.

**ON-SALE DEALER.** Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

**OPERATION:** In action, functioning.

**PACKAGE:** The bottle or immediate container of any alcoholic beverage.

**PACKAGE DEALER:** Any person other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

**PATIO:** Any finished walking surface which is at grade and is covered or uncovered. Patios shall have one access attached to a permanent structure for which malt beverage or alcohol is served or consumed.

**PUBLIC PLACE:** Any location that the local, state, or national government maintains for the use of the public, such as a highway, park, or public building.

**RESTAURANT:** A room and/or structure regularly, and in bona fide manner, used and kept open for the serving and/or preparing of meals to guests for compensation which has suitable table accommodations for at least fifty (50) guests therein at one and the same time; and a kitchen connected therewith containing conveniences for cooking sufficient to provide preparation and cooking of meals in a bona fide manner for fifty (50) or more guests at one and the same time. Facilities who serve only prepackage foods or items that can be heated in a microwave or small pizza or toaster ovens will not be considered a restaurant.

**RETAIL LICENSE:** Any on-sale or off-sale license issued under the provisions of this chapter.

**RETAILER OR RETAIL DEALER:** Any person who sells alcoholic beverages for other than resale.

**ROOF:** Any structural element or group of elements which are structural in nature and are covered with a material(s) that is (are) weather resistant. The roof shall be the top most element of the structure that meets the requirements of the current adopted building code.

**SALE:** The transfer, for a consideration, of title to any alcoholic beverage.

**SPECIAL EVENT LICENSE:** For purposes of this ordinance, a special event within the municipality is defined as an event or activity conducted by any generally recognized civic, charitable educational fraternal or veterans organization with an active chapter located within the City, or a wedding reception or other private family gatherings, or an event at a specified location within the City, or an event hosted at a hotel-convention facility having at least 75 beds for guests at the facility and with kitchen and dining facilities on site capable of providing meals in a convention hall facility with seating for at least 300 guests, which special event is projected by the applicant to bring at least 50 out of town guests to the motel convention facility. To obtain the Special Event License the civic, charitable, educational, fraternal or veterans organization, or for use at a specified location within the City or a hotel-conventional facility a license holder having a license already issued by the City pursuant to SDCL 35-4-2(4), (12), or (16), shall submit an applications stating their qualifications for a Special Event License on a form consistent with the requirements of SDCL 35-4-124 and providing all additional information required by the City Finance Office to meet the requirements of this ordinance. A Special Event License can only be issued to a current Sturgis license holder only for the same class of license previously issued to the licensee by the City of Sturgis

**TO SELL AND SERVE ALCOHOLIC BEVERAGES:** To take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. This term does not include tending bar or drawing or mixing alcoholic beverages.

**WALL:** Any wall or element of a wall, or any member or group of members, structural or non-structural, which defines the boundaries of a building and which is opaque in nature with the exception of windows or doors and supports a roof and/or floor above.

WINE: Any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent (0.5%) of alcohol by weight but not more than twenty- four percent (24%) of alcohol by weight.

**3.01.03: PENALTY**

Any violation of the provisions of this Title is a Class 2 Misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) and/or incarceration in the County jail for a period not to exceed thirty (30) days.

In addition, any person holding a license under this Title who is found to be in violation of any provisions of this Title shall face the possibility of revocation or non-renewal of any license.

**CHAPTER 3.02**  
**LICENSING AND SALES OF ALCOHOL AND MALT BEVERAGES**

**SECTIONS:**

- 3.02.01: License Required for Sale of Alcoholic or Malt Beverage
- 3.02.02: Wholesale License Fee
- 3.02.03: Submission of Invoices and Assessment of Fees
- 3.02.04: Delivery and Sale Required Within City
- 3.02.05: Consequences for Failure to Timely Pay City
- 3.02.06: Maintenance of Records and Inspection by Dealer
- 3.02.07: Limitation of One License per Location
- 3.02.08: Classification and Fees required for Alcoholic Beverage, Malt Beverage, Wine Licenses and Renewals
- 3.02.09: Special Event License Requirements
- 3.02.10: Consumption Only Permit
- 3.02.11: Hours of Operation
- 3.02.12: Authorized Number of On Sale Malt Beverage Licenses
- 3.02.13: Off or On Sale Sales on Sunday or Memorial Day Pursuant to Statute
- 3.02.14: Action by Council
- 3.02.15: Character Requirements for License
- 3.02.16: Area Limited
- 3.02.17: Kegs of Malt Beverage – Retail Sale – Records
- 3.02.18: Consuming, Blending, Possessing Alcoholic Beverages in Public Places – Disposal of Containers of Alcoholic Beverages Restricted
- 3.02.19: Open Containers Permitted Upon Approval
- 3.02.20: Weapons Prohibited on Premises Where Sold
- 3.02.21: Annual Review of Licenses
- 3.02.22: Annual Review of Applications
- 3.02.23: Sales with License Only
- 3.02.24: Additional Fee for Video Lottery Machine Holders
- 3.02.25: Traffic in Alcoholic Beverages Prohibited
- 3.02.26: Persons under Twenty-One Barred from On-Sale Premises
- 3.02.27: Violation as Ground for Revocation or Suspension of License – Multiple Licenses

**3.02.01: LICENSE REQUIRED FOR SALE OF ALCOHOLIC OR MALT BEVERAGE**

No person shall sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage without having obtained a license as required by to the provisions of the State Liquor Control Law SDCL Title 35 and by Sturgis City Ordinance, Title 3.

Any person who intends to sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage shall make an application for license under provisions of the State Liquor Control Law, SDCL 35 to the City of Sturgis Finance Officer.

Upon issuance of said license, the licensee shall be given a copy of Sturgis City Ordinance Title 3 and sign a statement verifying that he or she has received a copy of Title 3. It shall be the responsibility of each licensee to acknowledge in writing they have read and understood Title 3. Any violation of Title 3 of the City Ordinance Code shall be subject to the general penalty set out at 3.01.03 of Title 3.

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**3.02.02: WHOLESALE LICENSE FEE**

The City does hereby impose a fee of five percent (5%) of the wholesale purchase price, plus freight, for all malt beverages as defined by SDCL 35-1-1, as amended, delivered to the following persons:

- A. Any person holding a Malt Beverage Retailer's License, issued pursuant to SDCL 35-4-2 (16);
- B. Any person holding a Malt Beverage Package Dealer's License, issued pursuant to SDCL 35-4-2 (17); or
- C. Any person holding a Special Malt Beverage Retailer's License, issued pursuant to SDCL 35-4-11.4.

The authority for the imposition of this fee is contained in SDCL 35-4-60.2.

**3.02.03: SUBMISSION OF INVOICES AND ASSESSMENT OF FEES**

All malt beverage wholesalers, as defined by SDCL 35-1-1, and licensed, pursuant to SDCL 35-4-2, shall provide a copy to the Finance Officer of all invoices for sales of malt beverages delivered to the malt beverage dealers, as described in Section 3.02.02 herein, within the City, on or before the 5<sup>th</sup> day of each month for all sales made in the City for the prior month.

The Finance Officer shall on the 15<sup>th</sup> day of each month, or on the first working day thereafter, send a statement to each malt beverage dealer, assessing the fee required hereunder, based upon all invoices received by the City for malt beverages delivered to the dealer for the prior calendar month. The dealer shall have a period of ten (10) days within which to pay to the City the fee required hereunder. In the event of the failure by the dealer to pay the required fee within said ten (10) day time period, the Finance Officer shall notify the malt beverage wholesalers, in writing, by first-class mail, postage prepaid at Sturgis, South Dakota, of the fact that this fee has not been paid and that the license holder is in violation of the terms of this Title. A copy of the notice sent to the malt beverage wholesaler shall be sent to the dealer who is in default. The wholesalers shall not deliver any malt beverage to the dealer who is in default under the terms of this Title until such time as the wholesalers are notified by the City that all fees owing to the City have been paid in full.

**3.02.04: DELIVERY AND SALE REQUIRED WITHIN CITY**

No malt beverage dealer, as described in Section 3.02.02 herein, shall sell any malt beverages that have not been delivered to the malt beverage dealer within the City for sale within the City.

**3.02.05: CONSEQUENCES FOR FAILURE TO TIMELY PAY CITY**

No malt beverage dealer's license, as described in Section 3.02.02 herein, shall be renewed until all fees owing pursuant to this Title have been paid in full.

In addition to the termination of the malt beverage sales to the premises affected and/or non-renewal of a license, the City may take any civil action authorized by the statutes of the State of South Dakota to collect the charges imposed by this Chapter.

**3.02.06: MAINTENANCE OF RECORDS AND INSPECTION BY DEALER**

The Finance Officer shall maintain an accurate record, using the information supplied by the malt beverage wholesaler of the sales made to the individual malt beverage dealers in the City. The records, including copies of wholesalers' invoices, maintained by the Finance Officer concerning any malt beverage dealer shall be open to inspection only by that dealer or his or her designee during normal business hours.

### **3.02.07: LIMITATION OF ONE LICENSE PER LOCATION**

No person shall hold both an On-Sale Liquor Dealer's License, issued pursuant to SDCL 35-4-2 (4) and a Malt Beverage Retailer's License or Malt Beverage Package Dealer's License, issued pursuant to SDCL 35-4-2 (16) and (17), for the same location.

### **3.02.08: CLASSIFICATION AND FEES REQUIRED FOR ALCOHOLIC BEVERAGE, MALT BEVERAGE AND WINE LICENSES AND RENEWALS**

A. The following classifications and fees are established for licenses for sales of distilled spirits, wines, and malt beverages

Annual License	<i>Initial Fee</i>	<i>Renewal Fee</i>
1. On-sale dealer: Any person who sells or keeps for sale any alcoholic beverage, other than pursuant to another license under this chapter, for consumption on the premises where sold	\$1.00 per City resident, determined by last U.S. Census	\$1,500
2. On-sale dealer (full-service restaurant)	Market price as set by City Council	\$1,500
3. Off-sale dealer: Any person who sells or keeps for sale any alcoholic beverage for consumption off the premises where sold	\$500	\$500
4. Malt beverage retailer: Any person who sells or keeps for sale, other than resale, malt beverages as both package dealers and on-sale dealers	\$300	\$300
5. Off-sale malt beverage package dealer: Any person who keeps for sale or sells malt beverages for consumption off the premises where sold	\$200	\$200
6. On and Off Sale malt beverage and SD Farm wine license.	\$325	\$325
7. Off-sale malt beverage and off-sale South Dakota wine package dealer: an off-sale malt beverage package dealer who also keeps for sale or sells wines produced pursuant to SDCL chapter 35-12 for consumption off the premises where sold	\$225	\$225

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8. Wine retailers, being both package dealers and on-sale dealers	\$500	\$500
Special Event Licenses	Initial Fee	Renewal Fee
9. Special malt beverage or on- sale wine license (non-profit, civic, charitable or fraternal organizations only)	\$50 per day per type of beverage up to 15 consecutive days	N/A
10. Special off-sale wine dealers license (Fair Board, public, civic, charitable, educational or fraternal organization in conjunction with special event within city, selling licensed South Dakota wines only)	\$50 per day per type of beverage up to 15 consecutive days	N/A
11. Special malt beverage retailer and/or on-sale wine retailer license (community playhouse for non-profit organization in conjunction with a theatrical production only)	\$50 per day per type of beverage up to 15 consecutive days	N/A
12. Special on-sale liquor dealer license. ( <del>Fair Board</del> , public, civic, charitable, educational or fraternal organization in conjunction with special event within city, selling licensed on-sale liquor.)	\$100 per day per type of beverage up to 15 consecutive days	N/A

B. An off-sale license may be authorized for premises where the sale of liquor constitutes less than 40% of the gross business transacted on the premises, provided that:

1. The area in which liquor is displayed for sale is located within a building located on the premises and is separated from the remaining premises by partitions or walls at least 7 feet in height, and that the liquor area shall be physically closed during times when off-sale service is prohibited by the South Dakota Liquor Control Law;

2. Store personnel shall be physically present within the confines of the Liquor Sales Department at all times it is open to the public; and

3. The licensee shall not permit any person less than 21 years old to loiter in the liquor display and sale area.

### **3.02.9: SPECIAL EVENT LICENSE REQUIREMENTS:**

A. A special malt beverage retailer's license may be issued in conjunction with a special event, as defined at Section 3.01.02 herein, within the City to any qualified civic, charitable, educational, fraternal, or veterans organization or any qualified licensee licensed pursuant to SDCL §35-4-2(4), (6), or (16) in addition to any other licenses held by the special events license applicant;

B. A special on-sale wine retailer's license may be issued in conjunction with a special event, as defined in Section 3.01.02 herein, within the City to any qualified civic, charitable, educational, fraternal, or veterans organization or any qualified licensee licensed pursuant to SDCL §35-4-2(4), (6), or (12) or SDCL Ch. 35-12 in addition to any other licenses held by the special events license applicant;



C. A special on-sale license may be issued in conjunction with a special event, as defined in Section 3.01.02 herein, within the City to any qualified civic, charitable, educational, fraternal, or veterans organization or any qualified licensee licensed pursuant to SDCL §35-4-2(4), (6), or (16) in addition to any other licenses held by the special events license applicant; or

D. A special off-sale package wine dealer's license may be issued in conjunction with a special event, as defined in Section 3.01.02 herein, within the City to any qualified civic, charitable, educational, fraternal, or veterans organization or any qualified licensee licensed pursuant to SDCL §35-4-2(3), (5), (12), (17A), or (19) or SDCL Ch. 35-12 in addition to any other licenses held by the special events license applicant. A special off-sale package wine dealers licensee may only sell wine manufactured by a farm winery that is licensed pursuant to chapter 35-12.

E. The fee for each special malt beverage retailer's license, special on-sale wine retailer's license, and special off-sale package wine dealer's license will be fifty dollars (\$50.00) per day. The fee for each special on-sale liquor license shall be one hundred dollars (\$100.00) per day.

F. A public hearing is required before approval and issuance of any license under this section.

G. Any licenses issued pursuant to this section may be issued for a period of time established by the city council not exceeding fifteen (15) consecutive days.

H. Any non-profit licensee under this section may not be issued more than five (5) Special Event Licenses for a total of fifteen (15) days during a single calendar year.

I. This license may be issued pursuant all additional requirements of SDCL § 35-4-124, including the procedural regulations adopted by a Resolution of the Council.

### **3.02.10: CONSUMPTION ONLY PERMIT.**

A. The fee for this permit is five dollars (\$5.00) per day.

B. This permit allows the applicant to provide alcoholic beverages free of charge during the applicant's rental of the City Auditorium.

C. The application permit must be completed and filed with the Finance Office at least thirty (30) days prior to the first day of rental of a facility described above, and must be accompanied by a signed Rental Agreement and other documents required by City Policy.

D. The applicant must be at least twenty-one (21) years of age and provide an acceptable form of identification, together with a signed Hold Harmless Agreement.

E. This permit allows, with City Council's approval, the consumption of any alcoholic beverages on the City Auditorium property or by an individual or a nonprofit corporation within the City. The length of the brown bag permit may not exceed twenty-four (24) hours. Hours of consumption may not exceed those permitted for on-sale licensees.

**3.02.11: HOURS OF OPERATION.** The following table establishes the hours during which alcoholic beverages may be sold and the holidays when alcoholic beverages may not be sold for each class of license:

Type of License	Hours	Days	Holidays
1. On-sale dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day Sales.
2. On-sale dealer (full restaurant licensee)	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales.
3. Off-sale dealer	7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales.
4. Malt beverage retailer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
5. Off-sale malt beverage package dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
6. Off-sale malt beverage and off-sale South Dakota wine package dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
7. Wine retailers, being both package dealers and on-sale dealers	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
8. Special malt beverage or on-sale wine license	Set by Council, not to exceed times for on-sale licensee		N/A
9. Special off-sale package wine dealers license (SD farm winery)	Set by Council, not to exceed times for on-sale licensee		N/A
10. Special malt beverage retailer and/or on-sale wine retailer license (community playhouse for non-profit organization in conjunction with a theatrical production only)	Not more than one hour prior to commencement of a performance or at any time after performance is concluded		N/A

**3.02.12: AUTHORIZED NUMBER OF ON SALE MALT BEVERAGE LICENSES**

The number of On Sale Malt Beverage Licenses authorized by the City shall be 21. Said limitation shall not include any on-sale licenses issued as a Restaurant Malt Beverage License.

**3.02.13: OFF OR ON SALE SALES ON SUNDAY OR MEMORIAL DAY PURSUANT TO STATUE**

Off -sale or on -sale Licensees holding such valid licenses within the City may, pursuant to SDCL 35-4-81.1 sell alcoholic beverages on Sunday and also on Memorial Day within the municipality during hours otherwise allowed by South Dakota statute.

**3.02.14: ACTION BY COUNCIL.**

The common council may approve or disapprove an application for a license or a Special Event License depending on whether the council finds the applicant a suitable person to hold the license and whether the council considers the proposed location suitable. The common council may, in their discretion, require the applicant to appear personally at any meeting of the council and to answer any question which may be asked pertaining to the applicant or the place of business which may in any way pertain to the carrying on of the business applied for.

**3.02.15: CHARACTER REQUIREMENTS FOR LICENSEES.**

Any licensee or Special Event License under this chapter and SDCL Title 35 must be a person of good moral character, who has never been convicted of a felony. If the licensee is a corporation, the managing officers thereof must have like qualifications.

**3.02.16: AREA LIMITED.**

The common council shall not approve any application for “on-sale” or “off-sale” license to sell any alcoholic beverages in the city at any place of business unless that place of business is located in an area described as a commercial area on the zoning use district map of the city.

**3.02.17: KEGS OF MALT BEVERAGE – RETAIL SALE – RECORDS.**

No keg of malt beverage may be sold at retail in this state unless the licensee who sold the keg records the name-address and drivers license number of the person to whom the keg is sold and has provided for the identification of the keg. Each licensee shall maintain such sales records for one year and shall make the records upon request to any duly authorized officer or representative of any city, county or state agency responsible for enforcing this section or for enforcing South Dakota Codified Laws pertaining to consumption of alcohol.

The identification provided for in this section may not be permanent or damaging to the structure of the keg. For the purposes of this section, the term, keg, means an eight or sixteen gallon reusable plastic or metal container.

**3.02.18: CONSUMING, BLENDING, POSSESSING ALCOHOLIC BEVERAGES IN PUBLIC PLACES; DISPOSAL OF CONTAINERS CONTAINING ALCOHOLIC BEVERAGES RESTRICTED.**

- A. It is unlawful for any person to consume any alcoholic beverage upon the premises of a licensed on-sale dealer if the alcoholic beverage was not purchased from the on-sale dealer.
- B. It is unlawful for any person to consume any distilled spirits in any public place, other than upon the premises of a licensed on-sale dealer.
- C. For the purposes of this section, the term “public place” means any place, whether in or out of a building, commonly and customarily open to or used by the general public, and any street, or highway.
- D. Exceptions to this subsection are provided for in Section 4-14 of this chapter.
- E. Any person violating the provisions of this section is guilty of a Class 2 misdemeanor.

**3.02.19: OPEN CONTAINER PERMITTED UPON APPROVAL.**

Notwithstanding anything herein to the contrary:

- A. No regular on-sale malt beverage licensee may sell or allow to be consumed any malt beverage outside the building of the licensed premises unless the licensee’s business operates out of a permanent structure and the consumption of the malt beverage occurs in an outdoor designated area located on the premises of the licensee and is approved by the common council.
- B. The sale and consumption of alcoholic beverages may be permitted on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises, provided that the license holder derives more than fifty percent of its gross receipts from the sale of prepared food for consumption on the licensed premises. The sidewalk or walkway subject to a public right-of-way shall be immediately adjacent to and abutting the licensed premises. This section does not apply to any federal-aid eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid, and does not waive the requirements set out in Chapter 15.06 of the Sturgis Ordinances.
- C. The common council may, in its discretion, for community designated events, permit open containers in public places upon such terms and conditions consistent with the laws of the State of South Dakota and this Ordinance as the council may impose.

**3.02.20: WEAPONS PROHIBITED ON PREMISES WHERE SOLD.**

All license holders shall post the following notice at all entrances to their establishment in bold capital letters at least 3/4 of an inch high:

*IT IS UNLAWFUL TO ENTER THIS ESTABLISHMENT WITH ANY WEAPON.*

**3.02.21: ANNUAL REVIEW OF LICENSES.**

Annually the City Council shall review all liquor and/or malt beverage licenses issued by the City. Any person not complying with all applicable provisions of Title 3 and any other Sturgis City Ordinance may be subject to revocation or non-renewal of license.

**3.02.22: ANNUAL REVIEW OF APPLICATIONS.**

Annually, the City Council shall review applications for malt beverage and/or alcohol licenses. Issuance of any license or Special Event License shall be subject to a determination by City Council as to whether or not the permanent structure on the premises and the proposed location is fitting for the type of business that has been presented and is proposed to be operated at the legal description set forth in the application submitted pursuant to Section 3.02.01. The City Council shall take into consideration the location of any new or transferred license and its location in relationship to any residentially zoned area, school, daycare, church, place of worship, and/ or similar uses and such other location issues as the City Council may deem appropriate in reviewing and issuing a new or transferred license.

**3.02.23: SALES WITH LICENSE ONLY.**

Malt beverage and/or alcohol may be sold and/or consumed only at locations shown on the license issued by the City and is on file with the City Finance Officer and the Department of Revenue of the State of South Dakota. Property for which a permanent license is in existence at the time of adoption of this Title shall be permitted to continue their operations as they have in the past until said time that the license has been transferred or revoked by the City Council. In addition, these properties shall comply with the regulations, which were in effect at the time of issuance of their license.

**3.02.24: ADDITIONAL FEE FOR VIDEO LOTTERY MACHINE HOLDERS.**

An additional license fee is hereby imposed in the amount of \$50.00 for each video lottery machine on the licensed premises, which fee shall be applicable to all classes of licenses enumerated under SDCL 35-4-2(4), 35-4-2(11), 35-4-2(14) and 35-4-2(17), which involve convention facility, on-sale and malt beverage retailers, provided that not more than one fee shall be imposed per location. and the fee shall be paid at the same time and in the same manner as the fees paid on licenses issued pursuant to SDCL § 35-4-2. All fees received under this section shall be deposited into the general fund of the city.

**3.02.25: TRAFFIC IN ALCOHOLIC BEVERAGES PROHIBITED.**

**No person shall produce, transport, store, or sell any alcoholic beverage except** as authorized under the provisions of this chapter and SDCL Title 35.

**3.02.26: PERSONS UNDER TWENTY-ONE BARRED FROM ON-SALE PREMISES.**

As prohibited by SDCL 35-4-79, no On-Sale licensee shall permit any person less than twenty-one years old to loiter on the licensed premises or to sell, serve, dispense or consume alcoholic beverages on such premises, unless the presence of the person under the age of twenty one is authorized by the exception language of either SDCL 9-1-1 or SDCL 9-1-1.1.

**3.02.27: VIOLATION AS GROUND FOR REVOCATION OR SUSPENSION OF LICENSE – MULTIPLE LICENSES.**

The common council may revoke or suspend any license issued under this chapter and SDCL Title 35 upon proof of violation by the licensee, by the licensee's agents or employees, or by the manager or contractual operators of retail establishments and their agents or employees operating under a City license, of any of the following:

- (1) Any provision of SDCL Title 35;
- (2) Any rule promulgated pursuant to SDCL Title 35; or
- (3) Any ordinance or regulation relevant to alcoholic beverage control that has been adopted by the City.

For any licensee with multiple alcoholic beverage licenses for the same premises, upon suspension or revocation of any license issued pursuant to this chapter or SDCL Title 35, such licensee shall cease operation under all alcoholic beverage licenses held by such licensee for the same premises for the same period as the suspension or revocation.

**CHAPTER 3.03**  
**FULL-SERVICE ON SALE AND MALT BEVERAGE RESTAURANT LICENSES**

**SECTIONS**

- 3.03.01: Scope and Purpose
- 3.03.02: Definitions Applicable to this Chapter
- 3.03.03: Annual Reports
- 3.03.04: License Renewals
- 3.03.05: Only Retail, On-Sale Service Permitted
- 3.03.06: Full-Service Restaurant License Fees
- 3.03.07: Registry of Full-Service Restaurant On-sale Licensees
- 3.03.08: Issuance of new Full-Service Restaurant Licenses restricted
- 3.03.09: Requirements for Restaurant Malt Beverage License
- 3.03.10: Scope of Restaurant Malt Beverage License
- 3.03.11: Status of Existing Restaurant Holding On-Sale License

**3.03.01: LICENSE APPLICATION REQUIREMENTS.**

An applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality with an application form provided by the municipality to prove that the primary source of revenue from the operation of the restaurant will be derived from the sale of prepared food and nonalcoholic beverages and not from the sale of alcoholic beverages. The supporting documentation concerning the primary source of revenue submitted pursuant to this section is confidential.

**3.03.02: DEFINITIONS APPLICABLE TO THIS CHAPTER.**

For purposes of application of this Chapter only, the following terms as used within this Chapter shall have the following meanings.

**BAR:** Any permanently installed counter within the restaurant area from which alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages;

**FULL-SERVICE RESTAURANT:** Any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at tables, booths, or the bar. Any restaurant that only serves fry orders or food such as sandwiches, hamburgers, or salads is not a full-service restaurant;

**RESTAURANT:** Any area in a building maintained, advertised, and held out to the public as a place where individually priced meals are prepared and served primarily for consumption in such area and where not more than forty percent of the gross revenue of the restaurant is derived from the sale of alcohol or alcoholic beverages. The restaurant shall have a dining room or rooms, a kitchen, and the number and kinds of employees necessary for the preparing, cooking, and serving of meals.

**3.03.03: ANNUAL REPORTS.**

The full-service restaurant on-sale licensee shall submit an annual report and supporting documentation to the City on forms provided by the City Finance Office of the annual sales of the full-service restaurant, which includes an oath verifying the validity of the information provided in the report. The report and the

supporting documentation submitted pursuant to this section are confidential. The report shall contain the annual gross sales of the licensee for the following two categories:

1. Food and nonalcoholic beverage sales; and

#### **3.03.04: LICENSE RENEWALS.**

When renewing a full-service restaurant on-sale license, the City shall condition the license renewal upon receiving documentation that not more than forty percent of gross sales from the preceding twelve months operation of the full-service restaurant is derived from the sale of alcohol or alcoholic beverages.

#### **3.03.05: ONLY RETAIL, ON-SALE SERVICE PERMITTED.**

A full-service restaurant on-sale licensee may only serve alcoholic beverages for on-premise consumption in the bar and dining room area of the restaurant.

#### **3.03.06: FULL-SERVICE RESTAURANT LICENSE FEE.**

As required by State law, the license fee charged for a full-service restaurant on-sale license shall be at or above the current fair market value for such license as determined herein. However, any fair market value so established shall be a minimum of one dollar for each person residing within the City as measured by the last preceding decennial federal census. The license fee shall be initially established by Resolution within ninety (90) days of the initial adoption of this ordinance. Subsequent changes in the license fee shall not be made for a period of ten (10) years from the effective date of adoption of this Chapter unless a population growth reported by the Federal decennial census requires an increase in the fee.

Fair Market Value for full-service restaurant license shall be established as follows:

- A. Within 90 days of the effective date of this Chapter and as required by State statute, each licensee within the City who owns an on-sale license issued pursuant to SDCL 35-4-2 (4) or (6) as of January 1, 2008, and who purchased the license or had the license transferred to such licensee at any time between January 1, 2003, and January 1, 2008, shall report the amount originally paid for the on-sale license to the Finance Office on forms provided by the City. Any form submitted pursuant to this provision shall be signed under oath and shall include the documents establishing the amount originally paid for the on-sale license. If the transaction for the purchase of the on-sale license included real or personal property, the full market value of the real or personal property on the date of the original sale shall be deducted from the total transaction price to determine the amount paid by the licensee for the on-sale license. The burden of establishing the amount paid for the license shall be on the licensee. Any licensee contesting the fair market value of the real or personal property may appeal the valuation adopted by the City Council Resolution to circuit court.
- B. For purposes of this section, the term, "Current Fair Market Value" means the documented price of the on-sale license most recently sold between January 1, 2003, and January 1, 2008, through an arm's length transaction, less the value of any real or personal property included within the transaction.



**3.03.07: REGISTRY OF FULL-SERVICE RESTAURANT ON-SALE LICENSEES.**

The City Finance Office shall notify each current on-sale license holder of the existence of the registry and then maintain a registry of each full-service on-sale restaurant license that is being offered for sale. The City shall furnish a copy of the registry to anyone who requests a new-full service restaurant on-sale license. After receiving this notification, the existing full-service restaurant on-sale licensee is responsible for registering with the City that the full-service restaurant on-sale license is for sale.

**3.03.08: ISSUANCE OF NEW FULL-SERVICE RESTAURANT LICENSES RESTRICTED.**

The City may only issue a new license pursuant to this Chapter if no on-sale license is on the registry or a person desiring to purchase an on-sale license listed on the registry provides documentation showing that the person is unable to purchase the on-sale license at the price established pursuant to this Chapter and on terms satisfactory to both the potential buyer and seller. The price of any on-sale license registered as “for sale” with the City shall be sold at the current fair market price set by the City pursuant to a Resolution adopted in accordance with this Chapter.

**3.03.09: REQUIREMENTS FOR RESTAURANT MALT BEVERAGE LICENSE.**

A Restaurant Malt Beverage License shall only be issued to the owner of a permanent business whose business qualifies as a bona fide restaurant. A bona fide restaurant shall at a minimum meet the following requirements:

- A. Provide and keep open seating for at least fifty (50) people at all times;
- B. Have a kitchen therein with sufficient equipment to prepare and provide meals in a bona fide manner for fifty (50) people at all times. Facilities that only have a grill and/or serve only prepackaged foods or items that can be heated in grease, a microwave, crock pot or small pizza or toaster ovens will not be considered to have sufficient equipment; and
- C. Employ and have on hand at all times bona fide restaurant personnel of at least one cook or chef, one waitress and one host or hostess.

**3.03.10: SCOPE OF RESTAURANT MALT BEVERAGE LICENSE.**

A Restaurant Malt Beverage License shall authorize the restaurant to sell malt beverages from its permanent, year-round premises only. The license shall not authorize the restaurant to sell malt beverages from an expanded area of its premises, including but not limited to the sale of malt beverages from an attached or unattached temporary drinking establishment or beer garden.

**3.03.11: STATUS OF EXISTING RESTAURANT HOLDING ON-SALE LICENSE.**

Any person holding an on-sale license at the time of enactment of the amendments to this Chapter creating the Restaurant Malt Beverage License shall be deemed to be a holder of an on-sale license *not* subject to the limitation set forth in Section 3.02.12 regardless of whether said licensee qualifies as a restaurant under the requirements of Section 3.03.09.

(Revision to 3.03.03, 3.03.06 and 3.03.07 effective May 2, 2012, Ordinance 2012-08)

**CHAPTER 3.04**  
**STRUCTURE REQUIREMENTS, ON SALE ESTABLISHMENTS**

**SECTIONS:**

- 3.04.01: Mandatory Compliance with State and Local Licensing Laws
- 3.04.02: General Requirements and/or Limitations Mandatory Compliance with Chapter 3.04
- 3.04.03: Construction Requirements
- 3.04.04: Wall, Floor and Roof Requirements
- 3.04.05: Window Requirements
- 3.04.06: Deck, Patio and Beer Garden Requirements
- 3.04.07: Restroom Requirements
- 3.04.08: Exit Requirements
- 3.04.09: Occupancy Requirements/Limitations
- 3.04.10: Inspection Required Prior to Sales
- 3.04.11: Appeal Process

**3.04.01: MANDATORY COMPLIANCE WITH STATE AND LOCAL LICENSING LAWS.**

No person shall sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage without having obtained a license pursuant to the provisions of the State Liquor Control Law SDCL Title 35 and Sturgis City Ordinance, Title 3.

Any person who intends to sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage shall make an application for license under provisions of the State Liquor Control Law, SDCL 35, and to the City Finance Officer.

All malt beverage and/or alcohol licenses may be issued only if the proposed license is in compliance with in zoning requirements and all other City Ordinances.

**3.04.02: GENERAL REQUIREMENTS AND/OR LIMITATIONS.**

- A. All Federal, State and Local laws shall be complied with at all times.
- B. In the event a fight or civil disturbance occurs within the temporary drinking establishment where police are called to assist, the establishment shall temporarily cease selling of all malt beverage/alcohol, until the disturbance is under control and the Police Department of the City has granted permission to reestablish sales.
- C. Beverage cans, trash and other debris, which is collected during an event, shall be bagged and removed from the property on a daily basis to prevent the accumulation of pests and to deter unwanted smell as required by City Ordinance 11.04.
- D. It shall be unlawful for any person to permit illegal nudity, lewd or indecent acts, exhibitions, or any other behavior in violation of City Ordinance Chapter 12.10 and/or Chapter 12.11 to take place within their establishment.

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- E. Any structure from which alcoholic beverages are sold or served shall be constructed in compliance with this ordinance and all City Building and/or Fire Codes, and other applicable Ordinances.
  - F. It shall be unlawful for any person to allow the distribution, sale and/or consumption of malt beverage and/or alcohol by a minor in their establishment.
  - G. It is the policy of the City Council that no on-sale malt beverage and/or alcohol license will be issued to any business where gasoline, blended gasoline and/or diesel fuel is stored, sold and/or dispensed.
  - H. No person who has been issued a license for alcoholic beverages under this Title may permit any illegal activity within the licensed premises or on adjoining property subject to the control of the licensee.
  - I. No person who has been issued a malt beverage and/or alcohol license shall permit prostitution as prohibited by SDCL Chapter 22-23. In addition to the penalty set forth in this Title, any person who permits illegal prostitution to take place within their drinking establishment shall be subject to possible revocation or non-renewal of their malt beverage and/or alcohol license.

#### **3.04.03: CONSTRUCTION REQUIREMENTS.**

All structures utilized for drinking establishments after the adoption of this Ordinance shall comply with the current adopted addition of the International Uniform Building Code as set out in Title Two (2) of the Sturgis City Ordinances.

As an exception to the above, establishments, which are in existence at the time of the adoption of this ordinance, will be permitted to continue their use without complying with the current adopted building code. But at any time said establishment becomes unsafe and/or a permit is taken out to remodel, alter or add on to any portion of said facility, the entire establishment shall be brought into compliance with the current adopted codes and this ordinance.

#### **3.04.04: WALL, FLOOR AND ROOF REQUIREMENTS.**

Any floor of an On-Sale establishment shall be constructed of elements, which are structural or non-structural in nature and covered by material(s) which create a hard non-absorbent surface.

Any roof of an On Sale establishment may not be occupied or utilized as a floor. Any walls of an On Sale establishment shall be solid in nature with the exception of areas for windows and exits. Walls shall run from grade to the roof of the structure. Any walls shall be constructed to comply with the requirements of the International Building Code.

#### **3.04.05: WINDOW REQUIREMENTS.**

For the purpose of this Section, all requirements that apply to windows or other openings in the walls of an On-Sale establishment shall be those established by the Building Code adopted at Title 2, Chapter 2 of the Sturgis City Ordinances.

#### **3.04.06: DECK, PATIO AND BEER GARDEN REQUIREMENTS.**

Malt beverage and/or liquor shall only be served upon decks and/or patios permanently connected to the structure of a drinking establishment. The requirements for service of alcohol upon a permanent deck and/or patio for all times of the year shall be as follows:

- A. Any patio or beer garden shall be surrounded by a physical barrier, which is continuous with the exception of the exit and entrance points, and the deck and/or patio shall be surrounded by a 42" high continuous railing, or a comparable permanent barrier with the exception that the railing may have a break for approved ingress and egress points. One of the ingress or egress points shall be attached to the attached permanent structure.
- B. Any deck for which the traffic surface is not more than two (2) feet above grade shall have the 42" perimeter barrier meeting IBC requirements.
- B. Any patio shall be constructed of concrete, rock, asphalt or similar non-absorbent hard surface materials;
- C. Any deck shall be constructed as required by the Building Code adopted by the City of Sturgis.
- D. Any deck, patio or beer garden shall have a minimum of one entrance/exit, which has access to the structure to which it is attached; and
- E. Compliance with all applicable provisions of this Title.

#### **3.04.07: RESTROOM REQUIREMENTS.**

It is recognized by the City Council that during the Sturgis Motorcycle Rally On Sale establishments have a substantially larger need for sanitary plumbing fixtures than during normal operations, and in consideration of the same, the following requirements are hereby established to determine the number of permanent restroom fixtures and temporary restroom fixtures that will be required of an On Sale establishment:

Restrooms for permanent structures and patios and/or decks for which alcohol and/or malt beverage is served or consumed will be determined as follows (in no case shall there be less than two permanent restroom fixtures for each sex):

- A. One restroom fixture shall be added for each sex per each additional 50 occupants within the structure and on the deck/patio combination. The occupancy load shall be based upon the International Building Code wherein occupancy is determined on the basis of 1 person per 7 square feet within the structure and on the deck/patio combined.
- B. When three or more fixtures are required for each sex, the women's restroom shall be required to have one additional fixture more than the men's.
- C. All restroom's hand sinks shall be installed at the ratio as determined by the Uniform Plumbing Code.

For determining the number of temporary restroom facilities to be added during the period one week before the Rally and the official Rally period, the occupancy rate for the permanent structures and the

deck/patio combined shall be determined as 1 person per 7 square feet. The same ratios as above shall then be applied and any additional fixtures required by the occupancy rate shall be provided in the form of portable restroom facilities. Portable restroom facilities shall be located upon the real property of the On Sale establishment as a condition of meeting the requirements for the liquor license.

**3.04.08: EXIT REQUIREMENTS.**

All exits of any On Sale establishment must meet or exceed the requirements which are laid out in the Uniform Building Code adopted by the City.

**3.04.09: OCCUPANCY REQUIREMENTS/LIMITATIONS.**

At no time shall the owner/operator exceed the occupant load, which is issued by the Building Inspector and/or Fire Chief. Due to public safety issues, if at any time the Chief of Police, the City Building Official, City Fire Chief or their designees finds that the permitted occupant load has been exceeded, he/she may have the sale of alcohol stopped until the occupant load is decreased to the permitted occupant load.

The occupant load for an On Sale establishment and decks, patios and beer gardens shall be figured as follows:

Maximum occupant load: One (1) occupant per each seven (7) square feet of interior floor area or exterior deck or patio.

This formula will not include areas such as restrooms, employee work or service areas or other areas, which are not commonly visited by the public.

**3.04.10: INSPECTION REQUIRED PRIOR TO SALES.**

Before the owner/operator may begin sale of alcohol, he/she shall be required to have the establishment inspected by the Chief of Police, the Building Inspector and the Fire Chief.

**3.04.11: APPEAL PROCESS.**

Any person aggrieved by a decision of the Chief of Police, Building Inspector or Fire Chief made under this Chapter shall be entitled to have said decision reviewed by the Chief of Police, Building Inspector or Fire Chief. If after review the said person is unsatisfied, he or she may appeal the decision to the City Council. The process shall be as follows:

- A. An aggrieved person shall first file a written request for review with the Chief of Police, Building Inspector or Fire Chief setting forth the basis for which he or she believes the Chief of Police, Building Inspector or Fire Chief's decision to be in error. The writing shall also include the person's name and mailing address.
- B. Upon receipt of a written request for review, the Chief of Police, Building Inspector or Fire Chief shall review his or her decision and mail a written response to the aggrieved person within twenty (20) days.
- C. If the aggrieved person is not satisfied with the decision of the Chief of Police, Building Inspector or Fire Chief following review, he or she may file a notice of appeal with the

Finance Officer. There shall be a one hundred dollar (\$100.00) fee assessed for filing an appeal, which shall be paid to the Finance Office at the time of filing the notice of appeal.

- D. Upon receipt of a notice of appeal, the Finance Officer shall notify the City Manager.
- E. After notification of the City Manager by the Finance Officer, the Appeal shall follow the Appeal provision of Title 36, Code Enforcement.